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FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: AR 09-06  
DATE REFERRED: July 20, 2009  
DATE ACTIVATED: August 31, 2009

EXPIRATION OF SOL: November 24, 2009 –  
December 30, 2009

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Kuhl for Congress and  
Sharon A. Gunsolus, in her official capacity as  
treasurer

RELEVANT STATUTES  
AND REGULATIONS:

2 U.S.C. § 431(2)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441i(e)(1)(A)  
11 C.F.R. § 100.52(d)  
11 C.F.R. § 100.72  
11 C.F.R. § 100.73  
11 C.F.R. § 106.1(a)  
11 C.F.R. § 110.3(d)  
11 C.F.R. § 110.8(d)

INTERNAL REPORTS CHECKED:

Audit Documents  
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

This matter was generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of Kuhl for Congress and Sharon A. Gunsolus, in her official capacity as treasurer,<sup>1</sup> ("Federal Committee" or "Respondents") covering the period May 16, 2003, through December 31, 2004 ("audit period"). John "Randy" Kuhl, Jr., an incumbent New York State Senator, was a

<sup>1</sup> Michael A. Avella served as treasurer during the audit period. Sharon A. Gunsolus has served as treasurer from October 5, 2005, to the present.

1 candidate for a U.S. House of Representatives seat in New York's 29<sup>th</sup> Congressional District in  
2 2003-2004 and designated the Federal Committee as his principal campaign committee. While  
3 running for federal office, Kuhl continuously served in the New York State Senate and  
4 maintained his state committee, Friends for Kuhl ("State Committee"), which accepted  
5 contributions and made disbursements.

6 The Audit Division forwarded its initial Final Audit Report ("FAR") to the Commission  
7 on February 20, 2008.<sup>2</sup> The Commission approved a revised FAR on July 6, 2009, and the Audit  
8 Division referred Finding Two to the Office of General Counsel on July 20, 2009.<sup>3</sup> Finding Two  
9 involves the Federal Committee's receipt of prohibited in-kind contributions in 2003 and 2004  
10 totaling \$22,056 from the State Committee. According to the New York State Board of  
11 Elections, the State Committee was terminated on August 2, 2005. As such, we make no  
12 recommendations as to this defunct committee.

13 In the FAR approved by the Commission on July 6, 2009, the Commission agreed to the  
14 use of an allocation method reflecting the actual benefit derived by each committee as supported  
15 by invoices and other documentation supplied by the Federal Committee. *See* 11 C.F.R.  
16 § 106.1(a)(1). *See also* Advisory Opinions 1978-67 (Anderson) (shared use of campaign  
17 facilities by a federal and state campaigns must be allocated in a manner that equitably reflects

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<sup>2</sup> The initial FAR that circulated in February 2008 used a number of allocation methods for determining whether the State Committee may have made prohibited in-kind contributions to the Federal Committee. Based on disagreements concerning some of the allocation methods, there were insufficient votes to approve the initial FAR, and the Commission directed the Audit Division to revise its report.

<sup>3</sup> On July 16, 2009, the Commission adopted an Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters. On August 7, 2009, we sent Respondents a pre-RTB letter consistent with this procedure, along with a copy of the FAR's Finding Number two, allowing them the opportunity to respond within 15 days of receipt. After the response period had elapsed, we contacted the Federal Committee's treasurer on August 27, 2009. She confirmed receipt of the pre-RTB letter, but said she did not know whether the Federal Committee would respond to it. We requested that she quickly get back to us concerning whether or not the Federal Committee would respond. To date, she has not contacted us and we have not received a response to our August 7, 2009 letter.

1 the actual use and benefit to each campaign) and 1994-37 (Schumer) ("payments involving  
2 expenditures on behalf of a clearly identified federal candidate and disbursements on behalf of a  
3 non-federal candidate should be attributed to each such candidate according to the benefit  
4 expected to be derived by each candidate"). Based on this method, the State Committee paid for  
5 expenses totaling \$22,974 that should have been paid by the Federal Committee. Specifically,  
6 these expenses included advertisements (\$150), a professional fee paid to the Federal  
7 Committee's treasurer (\$8,550), credit card purchases (\$258), and polls (\$14,016). *See id.*

8 An individual who is a candidate for both a federal and state office must designate  
9 separate committees and establish completely separate campaign organizations. *See* 11 C.F.R.  
10 § 110.8(d). *See also* Advisory Opinion 1994-37 (Schumer). Additionally, transfers of funds or  
11 assets from a candidate's campaign committee for a non-federal election to his or her principal  
12 campaign committee for a federal election are prohibited. 11 C.F.R. § 110.3(d). The purpose of  
13 this prohibition is to prevent the use in federal elections of funds raised outside the limits and  
14 prohibitions of the Act and to ensure that all funds used in federal elections are reported.  
15 Further, the Act prohibits entities directly or indirectly established, financed, maintained or  
16 controlled by or acting on behalf of a candidate from receiving funds in connection with an  
17 election for Federal office unless the funds are subject to the limitations, prohibitions, and  
18 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A). Here, the State Committee paid  
19 \$22,974 in expenses that should have been paid by the Federal Committee. Applicable New  
20 York state law at the time these expenses were paid permitted contributions to state committees  
21 in excess of the federal limits and contributions from corporations, and none of the state  
22 campaign funds at issue were subject to the Act's reporting provisions as required by Section  
23 441i(e)(1)(A). Thus, the Federal Committee received prohibited in-kind contributions from the

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1 State Committee, in violation of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). *See* MUR  
2 5426 (Dale Schultz for Congress) (Schultz Federal committee effectively received prohibited  
3 transfer of funds when the Schultz State Committee paid for expenses that the candidate incurred  
4 in connection with his federal election).

5 Accordingly, we recommend that the Commission find reason to believe that the Federal  
6 Committee received \$22,974 in prohibited in-kind contributions from the State Committee in  
7 2003 and 2004, in violation of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).

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**III. RECOMMENDATIONS**

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21 1. Open a MUR.  
22 2. Find reason to believe that Kuhl for Congress and Sharon A. Gunsolus, in her official  
23 capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).  
24 3. Approve the attached Factual and Legal Analysis.


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6. Approve the appropriate letter.

Thomasenia P. Duncan  
General Counsel

9/30/07  
Date

BY:

  
Stephen A. Gura  
Deputy Associate General Counsel  
for Enforcement

  
Susan L. Lebeaux  
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